

Does apartheid exist in Israel and occupied Palestine?

According to legal experts, the policy of the State of Israel towards Palestinians, both occupied territory and Israel, can be regarded as a form of apartheid.

The use of the term 'apartheid' may raise questions. How is apartheid defined in international law? And is Israel really guilty of that? Is there not too much focus on Israel, considering the issues in so many other countries? And what needs to be done to improve the situation? Set out below are our answers to these questions.

How is apartheid defined in international law?

The [UN International Convention on the Suppression and Punishment of the Crime of Apartheid \(ICSPCA\)](#) of 1973 and the 1998 [Rome Statute](#) identify the following definition criteria of apartheid:

- the existence of an institutionalised regime of systemic oppression and domination;
- this regime is committed by one 'racial group' over another racial group;
- and with the clear 'intention' of maintaining that regime;
- one or more 'inhumane acts' are committed.

Apartheid is a crime against humanity and therefore one of the most serious violations of international law. Under international law, other countries (third States) are obliged to refrain from aiding or contributing to the maintenance of an apartheid regime in any way whatsoever. Businesses and financial institutions are under specific obligation not to contribute to the maintenance of an apartheid regime.

Is there apartheid?

According to experts in international law, the Israeli policy towards the Palestinians in both occupied territory (the West Bank, including East Jerusalem and Gaza) and in Israel, has all the elements to be able to speak of 'apartheid' in a legal sense.

There is an institutionalised regime of systematic suppression and domination by one racial group¹, and the clear intention of maintaining this regime. Israel commits multiple 'inhumane acts' against Palestinians in occupied territories and in Israel:

- Palestinians in occupied territory are victim to practically all the 'inhumane acts' set out in Article 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid ICSPCA with the exception of inhumane acts relating to genocide (Article 2b) and forced labour (Article 2e).
- Palestinians in Israel are victim to such inhumane acts as set out in Article 2c (prevention and denial of full political, socio-economic and cultural rights) and Article 2d (the division of the population along racial lines, including by creating separate reserves) of the ICSPCA.

Moreover, for decades, Israel has denied millions of Palestine refugees the right of return, referring explicitly to a 'demographic risk' that Palestinian refugees would pose. The systematic denial of the right of return should be regarded as an essential instrument to maintain the Israeli apartheid regime.

The importance of international law in peace work

In international law, apartheid as a political system is defined as a crime against humanity. Based on years of research by various experts, [Human Rights Watch](#) (HRW), Israeli peace and human rights

¹ In international human rights law, race (and racial discrimination) are widely interpreted and concern more than skin colour or genetic traits. Distinction is also made based on such things as origin and national or ethnic origin. Jewish Israelis and Palestinians may be considered as separate identity groups within the broader notion of racial groups.

organisations [B'Tselem](#) and [Yesh Din](#) and the Palestinian organisation [Al Haq](#), among others, have concluded apartheid does exist in Israel and occupied Palestine.

PAX presented the HRW report to legal experts including Prof. Janne Nijman. Prof. Nijman is Academic Director of the Asser Institute (an important centre of knowledge, expertise and research in the field of international humanitarian and criminal law) and a member of the Supervisory Board of PAX. She shares the conclusion reached by Human Rights Watch.

Nijman: “The recent [HRW report](#) on the situation in Israel and the Occupied Palestinian Territories must be taken very seriously. Human Rights Watch is an independent human rights organisation with an excellent reputation. After extensive research into Israeli policies and actions in the occupied Palestinian territory and their impact on everyday life for Palestinians, HRW concludes that a legal threshold has been crossed as the three main elements of apartheid are present. HRW concludes that Israel is acting with the “intent to maintain domination” through a system of severe racial discrimination, leading to widespread “inhumane acts” violating the human rights of Palestinians. Israel’s ‘systematic suppression’ of Palestinians on the West Bank (including East Jerusalem) and in Gaza, and the occupation comply with the definition of apartheid. Unfortunately, I have to endorse that conclusion.”

Nijman does not regard the HRW report as an isolated legal finding. “It comes as no surprise to international lawyers. In 2004, the International Court of Justice (the highest judicial body in the UN system for disputes between states) established in its advisory opinion [Legal consequences of the the construction of a wall in the Occupied Palestinian Territory](#) that the wall violates international law. Since then, the wall has further perpetuated the annexation and discriminatory occupation system. In 2007 already, the UN Special Reporter on the human rights situation in the Palestinian Territories, concluded that ‘elements of the [Israeli] occupation of the Palestinian territory included forms of colonialism and apartheid. And in March 2021, the International Criminal Court (International Court of Prosecution of Persons for Genocide, War Crimes and Crimes Against Humanity) launched an investigation into the situation in the Occupied Palestinian Territories, a next step towards confronting Israel with its obligations under international law.”

What does PAX believe should happen now?

PAX strongly supports an (actual) peace process between Israel and Palestine and is committed to assisting those involved to improve the situation. Recognition of international law is essential to peace. An apartheid situation is illegal and stands in the way of peace. That is why, as a peace organisation, PAX speaks out against it; it must end. The international community, including the Netherlands, has an obligation to respond. By taking the following action and measures, for example:

- The Netherlands must commit to international investigations into apartheid in Israel and occupied Palestine. This could include openly supporting the [current investigations](#) of the International Criminal Court (ICC) into possible war crimes in the Palestinian Territories and striving to have the ICC investigation include investigations into the apartheid
- The Netherlands should draw up a list of effective countermeasures against violations of international law by the State of Israel. This should include both measures which can be taken unilaterally and measures taken in EU context with like-minded countries. In line with the previously adopted [Karabulut motion](#).
- The Netherlands should continue to support citizen initiatives that bring peace closer, and protect the space of civil society. In both Israel and Palestine. Peace will be even further out of sight without inclusiveness and civil society.
- The international community should engage with the communities affected, show solidarity and share these victims’ stories to bring a solution for peace closer.

- Companies that possibly play a part in these violations, in the building, expansion and/or functioning of the Israeli settlements for example, should cease these activities in the near future, and the Netherlands should investigate these roles.
- Financial institutions that maintain relationships with companies involved in violations such as those mentioned above must use their influence to persuade these companies to end their involvement. Should such influencing efforts fail to produce concrete results within a reasonable period of time, the financial institution should disinvest from the companies in question.

PAX [operates](#) in 15 countries across several continents, from Colombia to Iraq and from South Sudan to Ukraine. Since the late 1990s, PAX has been working with Israeli and Palestinian partners for peace. For example, together with partners, PAX supports [initiatives](#) by young Palestinians for more inclusiveness and participation in decision-making processes, [protection groups](#) with important roles for women are set up, and efforts are made to preserve the space for civil society to speak out. PAX also regularly conducts joint research with partners, including research into [EU-Israel relations](#) in the context of future peace. Read more about our work [here](#).